IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W. P. No. 5065 of 2001 (M/S)
(Old No. 36828 of 1997)

U.P. State Electricity Board .....Petitioner.

Versus

The Presiding Officer,
Labour Court & others ...Respondents.

Mr. Vinay Kumar, Advocate for the petitioner.
Mr. Gopal Narain, Advocate for respondent No. 2.

Hon. P.C. Verma, A.C.J.

This writ petition has been field by the petitioner challenging the award dated 13.1.1997 passed by respondent No. 1- The Presiding Officer, Labour Court, Dehradun contained in Annexure 14 to the writ petition.

By Notification dated 30.7.96 No. 5917-21/Dehradun-C.P./101/96, a reference was made to the Labour Court, which was registered as Reference No. 110/96 and the reference was in the following terms:

> "Whether the termination of service of the employee namely Subhash Chand S/o Sri Shishupal Singh, Unskilled Labour by the employer vide order dated 28.3.94 was illegal and unjustified? If so, to what relief the workman is entitled?"

The Labour Court has issued the notices to the parties. Both the parties filed their objections. According to the employee, the termination of his service vide order dated 17.5.94 w.e.f. 28.3.94 was illegal and against the principles of natural justice. The order of termination is an order of dismissal, which has been passed without holding any departmental inquiry and no charge-sheet was served on him.

The employer filed their objections stating therein that the employee was absent from duty from 28.3.94. It came to the notice of the employer on 30.3.94 that the workman behaved immorally with a 7 year old daughter of Peon Dharma Devi and a Criminal case under

Section 354 and 506 I.P.C. was registered against him in case Crime No. 54/94 and he was arrested in the said criminal case and was detained in jail. On account of this conduct of the workman, the employees working in Uttarkashi agitated and there was industrial unr3est. The memorandum was also handed over by the employees to initiate disciplinary action against the workman. A show-cause notice was issued to the workman, which was received by him and he replied the same by admitting the pendency of the criminal case under Section 354 and 506 I.P.C. and unauthorised absence from duty w.e.f 28.3.94 By the said show-cause notice, it was required that why the services of the workman be not terminated on account of his serious immoral act. After receipt of the reply of the show-cause notice, the services of the workman were terminated on the ground of loss of confidence.

It is not disputed that the workman was working prior to 28.3.94 with the petitioner and had completed 240 days. His services could not have been terminated except in accordance with either the provisions of the U.P. Industrial Disputes Act or in accordance with the provisions of certified model standing orders. It is not disputed that no charge-sheet was served on the workman for the aforesaid mis-conduct and no departmental proceedings were initiated against him. The order of termination was passed only after serving the show-cause notice. The order read with show-cause notice is stigmatic one and the Labour Court has rightly held so, which could not have been passed without holding a departmental inquiry. Termiantion for these reasons, cannot be said to be termination on the ground of loss of confidence. As the foundations are the reasons of termination which are stigmatic and the motive was to terminate the services for those reasons. In this factual background, it cannot be said to be a termination of loss of confidence. It is also not disputed that in criminal case, both the parties have entered into compromise and the workman was acquitted from the offence.

The second ground for termination of service was unauthorise absence from duty w.e.f. 28.3.94. For this an opportunity ought to

have been given before termination of service on the ground of unauthorise absence by holding a departmental proceedings against the workman. As held earlier, in the present case, no departmental proceedings were held and the termination order was passed without holding any departmental proceedings. Thus, this is not a termination, but is dismissal from service though quoted with a term ‘termination’,

The third ground raised before the Labour Court was that the reference was belated on and it could not be entertained and was liable to be dismissed. The Labour Court has recorded a finding that the delay was already condoned by the Deputy Labour Commissioner before making the reference after hearing the parties. Therefore, it was not open for the employer to raise this ground.

For the reasons recorded above, I do not find any infirmity or illegality in the judgment passed by the Presiding Officer, Labour Court Dehradun.

In view of this, the writ petition is devoid of merit and is, hereby, dismissed. No order as to costs.

(P.C. Verma, A.C. J.)

Dt. 2.04. 2004
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